IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1604 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL FIRE AND GENERAL INSURANCE CO LTD & 1 - Appellant(s)
Versus
ZABUBEN WD/O RABARI TALJABHAI AS HEIR &LR OF DECEASED RES.3. & 4 - Defendant(s)

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Appearance :
MR SHASHIKANT S GADE for Appellant(s) : 1 - 2.
MR SARTHAK VYAS for MR PRAKASH K JANI for Respondents : 1 - 2,4 - 5.
Respondent no.3 : deleted

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/07/2007

ORAL JUDGMENT

1. Shri Shashikant S. Gade, learned counsel for the

appellant, Shri Sarthak Vyas, learned counsel under the authority of Shri P.K. Jani for the respondents no. 1,2, 4 and 5.

2. Owner and the Insurance Company, being aggrieved by the award dated 21.10.85 passed by the M.A.C. Tribunal [Aux.] Mehsana, in M.A.C. Petition No. 790/84 are before this Court with a submission that the Tribunal erred in making the award in favour of the claimants to the tune of Rs. 1,24,000/-.

3. At the very outset, I had asked Shri Gade, learned counsel for the appellant as to how joint appeal is maintainable, Shri Gade submitted that as the owner and the Insurance Company have no conflicts of interest, such appeal is maintainable.

4. It is, however, to be seen that in the case of H.S. Ahammed Hussain and another v. Irfan Ahammed and another [AIR 2002 SC 2483], the Apex Court held that joint appeal would be maintainable after deleting the name of the Insurance Company. The reason for transposition of the Insurance Company is more than apparent.

An Insurance Company would be entitled to some of the defences which are available to it under Section 95[2] of the Motor Vehicles Act. Insurance Company, unless it had sought permission before the Tribunal to contest the matter on merits cannot be allowed to challenge the question of quantum or liability, rashness or negligence. In the guise of a joint appeal, Insurance Company cannot be allowed to have those defences which are not available to it under the Statute. The Supreme Court has observed that in case of joint appeal, Insurance Company should be transposed as party respondent so that the appeal can be heard on merits. In the present case, if I allow transposition of the Insurance Company as party respondent, then, the appeal cannot be decided in favour of the owner or the driver, because, they do not have to suffer any personal liability in the matter. Present is a case of joint and several liability and the Insurance Company has to reimburse the amount, if any, paid by the owner/driver to the claimants.

5. Present appeal is not maintainable.

6. However, on the merits also, I am unable to hold that the Tribunal was unjustified in making the award in favour of the claimants. The only question argued before this Court is about the quantum and, question of liability and responsibility have not been challenged. Despite oral evidence which showed and proved that the deceased was earning more than Rs.3000-Rs.4000 per month, the Tribunal has found that the total income of the deceased could safely be assessed at Rs. 1000/-. Out of the said income, the Tribunal has found that the deceased must have been spending a sum of Rs. 750/- per month on the family. Out of the said amount of Rs. 750/- the Tribunal apportioned a sum of Rs. 250/- towards the aged mother and has applied the multiplier of 8 only. The said multiplier cannot be said to be excessive. Similarly, for the wife and two minor children, the Tribunal held dependency to be Rs. 6000/- per year and applied multiplier of 15. Looking to the age of the deceased and the age of the dependents, I am

unable to hold that the Tribunal was unjustified in making the award in favour of the dependents. Even on merits, I am unable to hold in favour of the appellants.

7. The appeal deserves to and is accordingly dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-